S.B. CIVIL WRIT PETITION NO.1125/2005
M/s. Rajat Faison Bazar Vs. SBBJ and another.

Date : 29.3.2005

HON'BLE MR. PRAKASH TATIA, J.

Mr. Girish Sankhla, for the petitioners.

Mr. Jagdish Vyas, for the respondents.

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Heard learned counsel for the parties.

According to learned counsel for the petitioners, the respondent Bank settled the matter and the petitioners paid cash Rs.1,57,000/- and handed over a cheque for the amount of Rs.4,68,000/-. According to learned counsel for the petitioners, the possession of property was taken over by the respondent Bank by exercising the powers under Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short "the Act") on 12.1.2005. It is also submitted that the respondent Bank, even after accepting the amount of Rs.1,57,000/- which the petitioners deposited in cash and the cheque of Rs.4,68,000/-, is not releasing the property of the petitioners.

Learned counsel for the respondent bank vehemently submitted that the writ petition filed by the petitioner is not maintainable in view of the availability of alternate remedy as provided under Section 17 of the Act of 2002. It is also submitted that the petitioners submitted their

proposal vide letter dated 9.2.2005 and that offer was rejected by the respondent Bank which has been conveyed to the petitioners vide letter dated 28.2.2005 and not only this, the respondent Bank has not encashed cheque of Rs.4,68,000/- which was given to the Bank by the petitioner as post dated cheque.

In view of the above facts, the very foundation of the petitioners' claim that the matter was settled by the Bank itself is missing rather the petitioners have preferred the present writ petition by suppressing important material fact and without disclosing whether the Bank has withdrawn the payment of Rs.4,68,000/- or not ?

In view of the above, I do not find any merit in this writ petition and the same is hereby dismissed.

(PRAKASH TATIA), J.

S.Phophaliya